

TIGARD WATER DISTRICT BOARD OF COMMISSIONERS

Serving the Unincorporated Area

**Tigard Public Works – Annex
9020 SW Burnham Road, Tigard**

**Monday, April 23, 2007
7:00 p.m.**

Members Present:	Beverly Froude, George Rhine, Janet Zeider, and Charles Radley
Members Absent:	None
Staff Present:	Dennis Koellermeier, Brian Rager, Michelle Wareing, Roger Dawes, and Joy Koss
Visitors:	Ken Henschel, Barbara Sherman, Isador Morgavi, Virginia Babcock, Lisa Hamilton-Treick, and Julie Russell

1. Call to Order, Roll Call and Introductions

The Tigard Water District meeting was called to order by Chairperson Froude at 7:00 p.m. All board members were in attendance.

2. Approval of Minutes – January 22, 2007

The minutes of the January 22, 2007 meeting were unanimously approved by the board.

3. Visitors Comments

Ken Henschel – 14530 SW 144th Avenue (unincorporated area of Bull Mountain)

Mr. Henschel was concerned there was a misrepresentation of a decision and vote regarding the Canterbury property by the Tigard Water District (TWD) representative at the February 14, 2007 Intergovernmental Water Board (IWB) meeting. He said the process is very important and it needs to be followed carefully. Chair Froude indicated that the TWD board could come back to that topic later in the meeting.

Lisa Hamilton-Treick – 13565 SW Beef Bend Road (unincorporated area of Bull Mountain)

Ms. Hamilton-Treick provided TWD board members with a copy of a letter she submitted in January 2006, wherein she asked both the TWD and the IWB boards to consider leasing the Canterbury property to the City of Tigard. She asked Mr. Koellermeier to provide the IWB board with copies and asked both boards to consider this letter before moving forward.

4. Beginning of Budget Process

Management Analyst Michelle Wareing led the discussion. Financial Operations Manager Roger Dawes will be covering for Michelle at the May 14, 2007 TWD budget meeting.

Prior to the meeting, Ms. Wareing prepared a memo and a proposed budget indicating total resources for the fiscal year 2007-2008 to be \$105,768.00. Discussion continued about line items and cost projections. Ms. Wareing indicated the TWD board needs to submit a proposed budget to the Budget Committee for the May 14, 2007, meeting and then approve the budget.

Ms. Wareing responded to questions Commissioner Radley posed regarding expense line items (staff time and attorney fees) and appropriation funds. Commissioner Radley raised concerns about the accounting and timing of the Canterbury transaction, and how to reconcile this budget with that transaction. Mr. Koellermeier anticipates the transaction will be completed mid-June, including the partition of the property, and that transaction would show up in Miscellaneous Revenues.

To assist Ms. Wareing, Mr. Koellermeier asked the board if last year's budget was consistent with how the board wants to budget this year. Commissioner Rhine did not see any problem with the general approach, but thought more money should be allocated for the increased costs proposed for staff support and attorney services. Ms. Wareing explained the board has the freedom to move funds between various line items.

Mr. Koellermeier indicated that board members taking office in July 2007 might incur additional attorney costs by remodeling current practices and procedures. Commissioner Radley raised questions about appraisal costs. If the board wanted to contest the appraisal done by the City of Tigard on the Canterbury transaction, Mr. Koellermeier recommended projecting \$3,000 for appraisal fees. Appraisals done this year would come out of this year's Miscellaneous fund.

Commissioner Radley asked if the board pays an auditor when these accounts are audited. Ms. Wareing indicated the accounts are not audited because of the size of the budget, but two required filings are done with the State. The budget is filed with the State and the fiscal year-end is filed with State Auditors.

Ms. Wareing and Mr. Koellermeier discussed proposed expenditures with the board. Commissioner Rhine suggested the board use the 2006-2007 adopted budget as a start and make some adjustments. Based on what is decided about the sharing of the Canterbury property, Ms. Wareing will allocate the additional revenue in 2007-2008. Ms. Wareing indicated she would make adjustments to the budget and have the recording secretary send it to the board members for review. This would occur before the budget was presented at the May 14, 2007, meeting.

- **Select Budget Officer**

Commissioner Rhine was selected to be the Budget Officer for the 2007-2008 budget.

- **Appoint Budget Committee**

Commissioner Rhine motioned to accept the three volunteers for the open positions on the TWD Citizen Budget Committee and Commissioner Zeider seconded the motion. In addition to the existing members, the board voted unanimously to appoint Julie Russell, Virginia Babcock, and Ken Henschel to the TWD Citizen Budget Committee.

- **Present Budget Calendar**

Ms. Wareing reviewed the following dates and activities of the Budget Calendar with the TWD Board:

April 2, 2007:	TWD meetings were advertised as required by law.
April 23, 2007:	The Budget Officer was selected, Budget Committee appointed and proposed budget discussed.
May 14, 2007:	Budget Committee will debate and discuss the proposed budget. The TWD board will need to make a motion, second and vote to approve the budget.
May 21, 2007:	Public Hearing Notice & Summary of Approved Budget will be submitted for the adoption of the budget for publication on June 14, 2007.
June 25, 2007:	TWD board will adopt the approved budget, make any appropriations or minimal changes, and adopt the budget by resolution, which Ms. Wareing will prepare for board members to sign.

- **Discuss Proposed Budget**

In addition to the previous discussions, the board opened the discussion for public comment as follows:

Ken Henschel – Mr. Henschel asked for a brief clarification of the responsibility of the Budget Committee and its role. Ms. Wareing explained that by Oregon law a budget committee has to be set up for any special district municipality and is made up of equal numbers of the board and citizen members. Budget Committee members review the proposed budget and approve it. That approved budget is then sent to the board for adoption.

Julie Russell, 12662 SW Terraview Drive (unincorporated area of Bull Mountain)

Ms. Russell inquired who she should ask if she had questions about a particular budget item. Mr. Koellermeier replied she could come to him with any questions.

5. Alpha Community Development Request – Brian Rager

Mr. Rager referred to his April 13, 2007, memo that was mailed to board members prior to the meeting. This memo addressed properties that historically had homes on them. Later these properties were purchased by a developer who redeveloped the land into a subdivision. There is no further need for the existing water line easement and no reason for the historic water connection agreement between the previous homeowners and the old Tigard Water District that existed when those homes were built. In order for the developer to move ahead and record the final plat, the old easements and old agreements have to be cleared.

Mr. Rager has looked at this information and forwarded it to Clark Balfour, the attorney for the TWD Board. There were no issues. Mr. Balfour recommended a different release document entitled Statutory Quitclaim Deed that refers to the two documents: the easement and the water connection agreement.

Commissioner Radley motioned to approve the Statutory Quitclaim Deed and authorize the Chair to sign this recording, Commissioner Zeider seconded, and the motion was unanimously approved.

6. Pending Asset Transfers – Dennis Koellermeier

Chair Froude had previously asked Mr. Koellermeier to put this topic on the agenda. She asked him to answer questions and disseminate information about actions taken, or not taken, on the Canterbury property. She also wanted him to discuss other potential actions being considered on the Water District Building by this board and the IWB.

Chair Froude asked Mr. Koellermeier to provide some background history for visitors and she asked Commissioner Rhine to speak from an IWB perspective on this topic. As background information and a basis for action, Mr. Koellermeier provided copies of the Intergovernmental Agreement of 1994, Clark Balfour's legal opinion memo dated April 21, 2006, and the Intergovernmental Water Board Resolution No. 07-02.

Mr. Koellermeier said the City of Tigard Public Works Department completed a process of determining park needs and identified the neighborhood near the Canterbury property as park deficient, meaning there are no parks within a half a mile radius of area residents.

The Tigard Water District, prior to 1994, acquired a five-acre parcel that was partially developed. A no-cash discussion started about declaring that property surplus for use by the City of Tigard to develop as a park. Based on a legal opinion, the City of Tigard has to go through a process to declare the property surplus. The body that actually makes that decision is the IWB, because the Canterbury property is declared a system asset.

Procedurally, the IWB resolution recommended this property be declared surplus by the Tigard City Council. An appraisal will be done on the parcel, along with a minor partition, and then the City of Tigard has been granted first right of refusal to purchase that property at market value to develop a park. The IWB suggested the cash be put back into the capital fund, recognizing that all of the members of the IWB have a very large capital bill pending as a water source is developed. The IWB vote was unanimous to move ahead with this process. Historically, this process began in 2005. The TWD board was asked to table any decision on this issue by advocates of the new City of Bull Mountain because there was a question: What does it mean to have an asset of the Tigard Water District in the formation of the new City of Bull Mountain?"

Commissioner Rhine indicated the IGA that formed the Tigard Water Service Area states that if property is declared surplus, it reverts back to ownership of the entity that it is in. Mr. Koellermeier concurred. In 1994, assets were categorized as "system" or "other" assets. Other assets clearly become the property of the political entity in which they are located. System assets are generally needed by all the members of the agency to provide water. Clark Balfour's legal opinion memo concludes the Canterbury property is a system asset. Mr. Koellermeier believes when this property is declared surplus, by definition of the agreement, it would

automatically go to the City of Tigard. This would not be without compensation, so Mr. Koellermeier recommended to the Tigard City Council that an appraisal be completed.

Commissioner Rhine reiterated what Mr. Koellermeier said regarding the IWB position. He then remarked to Ken Henschel that he did represent to the IWB that the TWD board had voted on this issue. After checking the minutes, he found he was in error. Commissioner Radley thanked Commissioner Rhine for this clarification.

Commissioner Radley brought copies of a Special Districts Association letter dated January 28, 2005 that includes some public contracting laws regarding disposing of surplus property. Commissioner Radley questioned if the TWD Board is properly covered by these laws, as the law changed in March of 2005. Mr. Koellermeier said that the City of Tigard adopted rules prior to the change, so it did not fall under the recommended changes by the Attorney General. By not adopting rules, the IWB board needs to operate under the recommended Attorney General rules.

Commissioner Radley had several questions about how a percentage could be assigned to TWD. Mr. Koellermeier pointed out the Intergovernmental Agreement says the IWB members have undetermined interests. Commissioner Radley referenced the formula within the agreement and Mr. Koellermeier indicated the model was not setup to establish percentage ownerships for system assets. Commissioner Rhine remarked the IWB has, in fact, looked at this model. Mr. Koellermeier stated the IWB chose not to distribute the assets.

Commissioner Radley wanted to figure out the legal rights and obligations of the parties and wondered if the Clark Balfour letter was enough. Mr. Koellermeier stated the TWD attorney has said it is not a Tigard Water District decision. It is an IWB decision. They recommend to the City Council. City of Tigard rules are being used regarding the surplus property process. The decision of the proceeds was clearly in the purview of the IWB and their decision was unanimous. The IWB recommends financial issues regarding the water operations to the City of Tigard.

Discussion about determining the value of an asset continued among board members and Mr. Koellermeier. Chair Froude summarized it was Water District property and this transaction is just changing the use. The funds are still in the Tigard Water Service Area capital fund. Mr. Koellermeier indicated in 1994 it ceased being Tigard Water District property; it became a system asset with an undetermined ownership interest by four members. The deed still says Tigard Water District and that is where the misunderstanding is.

Commissioner Rhine asked how the transaction would be handled from an accounting point of view. Should Tigard exercise the right to purchase the property, Mr. Koellermeier would suggest a journal entry (an expense line item from the City's park development fund resulting in an income line item for the capital fund). In response to Commissioner Rhine's question about the size of the capital fund this year, Mr. Koellermeier estimated \$7-\$8 million.

Commissioner Radley expressed concern about potential liability and thought Mr. Balfour should draft a resolution to address this. Mr. Koellermeier suggested to Chair Froude that TWD board members and visitors submit any questions in writing, so they can be distributed to the attorney for a written response. April 30, 2007 was established as the date for submission of questions. The results will be distributed to interested parties.

The board opened the discussion for public comment as follows:

Ken Henschel – Mr. Henschel expressed his interest is to ensure a clear process is followed and can withstand legal challenges. Mr. Henschel suggested the board make a motion to formally call for the written questions previously discussed.

Mr. Henschel had a procedural question regarding the IWB Resolution No. 07-02. When the IWB voted on the resolution, it is based on the “Whereas” leading to the resolution. Since the IWB went on to pass this resolution based on the fourth “Whereas” that was incorrect, he thought it was in the best interest of all parties to inform the IWB, in writing, that one of the “Whereas” clauses was in error.

Mr. Henschel indicated he was confused about the “Whereas” that says “not less than the appraised value.” Mr. Koellermeier clarified that the Canterbury property has never been appraised. Mr. Henschel thought an above-board appraisal needed to be done. Mr. Koellermeier suggested questions such as these need to be put in writing.

Commissioner Radley inquired if the Tigard contracting rules set forth how many appraisals are needed. Mr. Koellermeier stated the City of Tigard’s process only asks for one appraisal; purchasing procedure includes a Level I Environmental Assessment and a title search of the property.

Julie Russell – Ms. Russell asked Mr. Koellermeier if the \$1 million in the proposed budget for the City of Tigard was an estimate, and what happens if the property appraisal is more than that? Mr. Koellermeier said those dollars are estimates and stated there are funds identified for park acquisition this fiscal year and next. The City Council makes final decisions related to park expenditures.

Ms. Russell asked if there would be a public process. Mr. Koellermeier indicated the declaration of surplus property is a process that will happen at a Tigard City Council meeting and that date has not yet been determined.

Ms. Russell said questions were brought up at the last IWB meeting whether or not representatives there represented the boards and councils. She wondered if the representatives can vote anyway they want, even if it differs from the boards or city council vote. Mr. Koellermeier said the forming document only requires a confirming vote by the individual boards. Representatives to the IWB can represent in any form they choose. Whether they go back and ask their boards for guiding principles before they vote is an internal issue with their boards as to how they are empowered to act on the IWB.

Isador Morgavi, 15145 SW 119th Avenue (unincorporated area of Bull Mountain)

Mr. Morgavi suggested the TWD board consider making a contribution to review security at the Tualatin-Tigard School District. Both Chair Froude and Commissioner Radley thought that was a great idea, but it should be brought up with the City of Tigard. Under state law, this District can only deal in water and can only spend money on water related issues.

Pending Asset Transfers (continued) – Dennis Koellermeier

Mr. Koellermeier provided an update on the Water Building issue. Since the Water Building is a system asset, and still being partially used for water system purposes, it would be inappropriate to

sell the asset to the City of Tigard. Because of the mixed use in that facility and distribution of remodel costs, the Tigard attorney has been asked to create a new deed that describes this system asset with undetermined ownership by the various members. An operating agreement that establishes leases based on commercial rates (possibly as an amendment), or amendments to the Intergovernmental Agreement, would be used to distribute the costs on a square footage basis for those non-water functions using the building. Most likely, these documents will be presented to the IWB on May 9, 2007.

Commissioner Rhine asked about the form of the deed and Commissioner Radley asked about the amendment authorizing the operating agreement. Mr. Koellermeier did not have answers to these questions, as the attorney has not completed his review. Mr. Koellermeier did indicate the term of this lease will probably be the same term as the agreement which terminates in 2018.

Ken Henschel – In regard to lease rates, Mr. Henschel expressed his concern that all transactions be independent. He recommended an outside party determine a fair lease rate for all parties, and that would be indexed yearly and the square footage reviewed yearly to avoid the appearance of impropriety. Chair Froude indicated the IWB representative would likely speak to that in May and suggested that Mr. Henschel sign up to speak at that meeting.

Commissioner Rhine asked if Mr. Koellermeier generally determines lease rates. Mr. Koellermeier said there has never been a situation with a lease. Because it is rather complicated, the city attorney will be at the May 9, 2007, IWB meeting. Mr. Koellermeier will be out-of-state and will not attend that meeting. Chair Froude commented that Tim Ramis, who wrote the original agreement, will be at the May 9, 2007, meeting.

Julie Russell – Ms. Russell asked if the TWD is the current deed owner, does the TWD have to vote on that issue. Mr. Koellermeier indicated the name on the deed is immaterial, because it has been modified by the IGA. The Tigard Water District is obligated by their signature to the IGA.

Ken Henschel asked if Mr. Koellermeier was saying it is the old Tigard Water District deed, not the new Tigard Water District deed. Mr. Koellermeier responded, in essence, it is the same District that never deformed. Commissioner Rhine indicated that it was not exactly the same. The structure of the organization is completely different. The old TWD actually ran the water system and owned assets, managed people, etc.

Commissioner Radley asked if the contracting rules say anything about what the procedure would be for figuring out rent. Mr. Koellermeier said he was not sure, but he would guess that it does not. He would have to look at that.

7. Water Supply Update – Dennis Koellermeier

For the sake of time, Mr. Koellermeier did not discuss the water supply update.

8. IWB Update – George Rhine/Janet Zeider

Commissioner Rhine indicated this topic had been addressed earlier under other agenda discussions. He plans to communicate to the IWB the comment about the “Whereas” and that he was in error when he made that comment. He also plans to communicate that the TWD is in the process of developing questions that will be directed to Clark Balfour for his response.

9. Non-Agenda Items

Commissioner Radley raised the question of filling the vacancy on the board. Other board members concurred it was not worth bringing in a new member for the remaining two meetings.

Commissioner Rhine commented he thought the TWD needs to take a leadership position by doing a study and creating a plan to provide water for areas 63 and 64. Commissioner Radley indicated the county is responsible for planning those areas and they have a \$900,000 budget from Metro. He suggested that TWD should engage the county to become a party on the stakeholders group that would be determining how that area is going to be planned.

The board opened the discussion for public comment as follows:

Ken Henschel – Mr. Henschel agreed that it would be a waste of time to fill the vacancy; however, his concern again is with the process. TWD bylaws say should a vacancy occur on the board, that vacancy will be filled in the manner prescribed by the ORS rule. Mr. Henschel wants to make sure the Tigard Water District is not in violation of its own bylaws. He wanted to state for the record that he is not interested in being elected or appointed short-term to such a position. Commissioner Radley thought he should take a look at that ORS rule for a timeline by which the vacancy must be filled.

**10. Set Next Meeting Date – May 14, 2007, 7:00 p.m. at Tigard Public Library,
2nd Floor Conference Room, 13500 SW Hall Blvd., Tigard**

11. Adjournment

Commissioner Rhine motioned to adjourn, Commissioner Zeider seconded the motion, and the board voted unanimously to adjourn the meeting at 9:17 p.m.

Joy Koss
Joy Koss, TWD Recording Secretary

Date: May 15, 2007